

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: July 19, 2006 - KW

Division: County Attorney

Bulk Item: Yes X No

Department: County Attorney

Staff Contact Person: Suzanne A. Hutton

AGENDA ITEM WORDING:

Approval of *revised* development Agreement proposed under Section 380, Florida Statutes, for the purchase of land located on Stock Island by Monroe County from *Overseas Redevelopment Company, LLC.*, at the request of the *Florida Department of Community Affairs*.

ITEM BACKGROUND:

On June 21, 2006, the Board approved a development agreement between *Overseas Redevelopment Company, LLC.*, *Monroe County* and the *Florida Department of Community Affairs* for transmittal to DCA for final approval and execution. DCA subsequently requested one change to Item 2.4.d., beginning on Line 9, Page 4 (replacing two (2) commas with semi-colons *and* deleting three words "~~within either description~~". The revision to the Agreement requires Board approval prior to its execution by DCA.

PREVIOUS RELEVANT BOCC ACTION:

On June 21, 2006, the Board approved a proposed 380 Development Agreement between *Overseas Redevelopment Company, LLC.*, *Monroe County* and the *Florida Department of Community Affairs*.

CONTRACT/AGREEMENT CHANGES:

N/A

STAFF RECOMMENDATIONS:

Approval of the revised *Agreement*.

TOTAL COST: N/A

BUDGETED: Yes No

COST TO COUNTY: N/A

SOURCE OF FUNDS:

REVENUE PRODUCING: Yes No

AMOUNT PER MONTH **Year**

APPROVED BY: County Atty X OMB/Purchasing NA Risk Management NA

DIVISION DIRECTOR APPROVAL: 

SUZANNE A. HUTTON, COUNTY ATTORNEY

DOCUMENTATION: Included X Not Required

DISPOSITION:

AGENDA ITEM #

Peters-Katherine

From: Hutton-Suzanne
Sent: Friday, July 07, 2006 2:29 PM
To: Peters-Katherine
Subject: FW: ORC 380
Attachments: ORC 380 clean version 6-29.doc; ORC 380 w strikethru underlin 6-29.doc

From: Hutton-Suzanne
Sent: Thursday, June 29, 2006 5:03 PM
To: Sanders-Jerry; 'Richard.Shine@dca.state.fl.us'
Cc: koenig@fkhlaw.com; marston@fkhlaw.com; Spehar-Dixie
Subject: RE: ORC 380

This is what will go on the next agenda, if OK with everyone. The only change is on page 4, in item 2.4.d.

From: Sanders-Jerry
Sent: Thursday, June 29, 2006 4:22 PM
To: Hutton-Suzanne
Subject: RE: ORC 380

Suzanne,

Here it is. Let me know if you want me to do anything.

Jerry

From: Hutton-Suzanne
Sent: Thursday, June 29, 2006 3:39 PM
To: Sanders-Jerry; 'Richard.Shine@dca.state.fl.us'
Cc: Peters-Katherine; Spehar-Dixie
Subject: ORC 380

Jerry:

The item that went on the 6/21 agenda under Dixie's add-on item N8 was sent to DCA. They want one more change. It is significant enough, although very little in the way of actual changing (2 semi-colons, adding back an "or," and the deletion of three words), that it needs to go back, yet again, to the BOCC. Please email me the final version (for 6/21) word document, and I will make the changes & place on next agenda.

I have talked to John Marsten, and the developer agrees that: 1) The parties always intended that the units could not be transferred off-site into a Tier 1 zoning district, which the qualifier language later in the sentence negates; and that 2) the change actually provides greater environmental protection, so everyone should theoretically be happy to agree to the change.

Suzanne A. Hutton
County Attorney
Monroe County
PO Box 1026
Key West, FL 33041-1026
305-292-3470

7/7/2006

AGREEMENT
Pursuant to Section 380.032(3), Florida Statutes

THIS SECTION 380.032 AGREEMENT is entered into between the **Department of Community Affairs**, an agency of the State of Florida (hereinafter referred to as "DCA" or Department"), **Overseas Redevelopment Company, LLC** (hereinafter referred to as "ORC"), and **Monroe County**, a political subdivision of the State of Florida (hereinafter referred to as "County"), pursuant to the terms and conditions herein and § 380.032(3), *Florida Statutes*.

WHEREAS, Monroe County, Florida includes within its boundaries all of the Florida Keys and is known as an Area of Critical State Concern, as designated under Sections 380.05, *Florida Statutes*, and Chapter 28-36, *F.A.C.*; and

WHEREAS, the DCA is the state land planning agency having the power and duty to exercise general supervision of the administration and enforcement of Chapter 380, *Florida Statutes*, the Environmental Land and Water Management Act (the "Act"), which includes provisions relating to areas of critical state concern; and

WHEREAS, DCA is authorized by § 380.032(3), *Florida Statutes*, to enter into an agreement with any landowner, developer or other governmental agency as may be necessary to effectuate the provisions and purposes of the Act, or any related rule; and

WHEREAS, in March, 2005 ORC entered into a contract to purchase a parcel of real property located on Stock Island, Florida comprising approximately 3.56 acres, as is more fully described in Appendix "A", also known Overseas Trailer Park (the "Property"), pursuant to which contract ORC, as contract vendee, is entitled to seek and obtain government approvals for the development of the Property; and

WHEREAS, after acquiring the Property, ORC presented an application for an amendment to a conditional use to the County to convert sixty-three (63) mobile home sites to forty-nine (49) market rate housing units on the property; and

WHEREAS, ORC negotiated with the County the terms of an agreement to resolve vested rights and other development issues that were the subject of protracted discussions between the County and ORC; and

WHEREAS, the goal of the parties was to seek a means to preserve affordable housing by identifying a plan that would create workforce housing units and recognize certain remaining market rate units on the Property; and

WHEREAS, it is in the public interest and consistent with current County ordinances and planning initiatives that Overseas Trailer Park be developed as workforce housing, rather than market rate units; and

WHEREAS, it is in the public interest and consistent with County planning initiatives that private lands capable of supporting workforce housing developments be purchased and brought into public ownership when possible; and

WHEREAS, the County recognizes that to achieve this public purpose it is necessary to provide Rate of Growth Ordinance rights (ROGO units) as part of the purchase price incentive to private landowners in the position of ORC.

NOW, THEREFORE, in consideration of the mutual covenants and the terms and conditions set forth hereafter, the County, ORC and DCA agree as follows:

1. **Incorporation of Recitals.** All of the foregoing recitals are incorporated into this Agreement.

2. **Development Agreements.**

2.1. The parties agree that the Property that is subject of this agreement, based on the most accurate historical information available, has sixty-three (63) ROGO units allocated to the Property.

2.2. The parties agree that ORC currently has the lawful right to construct forty-nine (49) market rate units on the Property.

2.3. The parties agree that there presently are an additional fourteen (14) market rate ROGO units on the Property that may be transferred off site by ORC.

2.4. The County will purchase the Property from ORC pursuant to the following terms and conditions:

- a. The County will pay to ORC the sum of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) in cash in exchange for the transfer of ORC's fee simple ownership in the Property.
- b. The County will lease the Property back to ORC in a lease format approved by the County and ORC for a term of ninety-nine

(99) years for a rental rate of Ten Dollars (\$10.00) per year. As tenant, ORC shall assume all expenses and obligations of ownership of the Property. As set forth below, ORC will redevelop the Property into a workforce housing community, which ORC will operate and manage consistent with the County's workforce housing regulations, as amended from time to time, including oversight by the County Housing Authority.

c. The County will allocate eighteen (18) of its affordable ROGO units in its inventory to ORC for the redevelopment project, and ORC will provide thirty-one (31) of its ROGO units to the project. Said eighteen (18) County units and thirty-one (31) ORC units shall be used by ORC to redevelop the Property into a forty-nine (49) unit workforce housing community. The County may substitute thirty-one (31) of its affordable housing ROGO allocations for the 31 ORC units and in which event ORC will assign the 31 ORC market rate ROGO allocations to the County for its use. Thereafter, ORC shall own all forty-nine (49) units and shall be able to sell the same to third parties in accordance with the County's workforce housing guidelines. The parties agree that ORC shall have the greatest possible latitude under the workforce housing guidelines in its selling of units in the community, and shall be able to sell such units at the maximum prices permissible under the workforce housing guidelines, including but not limited to those prices chargeable to people in the "moderate" income classification.

d. The remaining thirty-two (32) market rate ROGO units retained by ORC may be sold by ORC upon such terms and conditions as it in its sole and absolute discretion deems appropriate, and such units may be transferred off the Property singly, in groups or all together to a receiver site or sites. ORC shall be entitled to transfer such units at such time as it has been issued a building permit for

the redevelopment of the Property as set forth above. Each of the thirty-two (32) ROGO units to be transferred off the Property is deemed to meet the transfer criteria established by County regulations and ordinances and shall be transferable as of right to a receiver site. The units transferred off may not be transferred beyond the Lower Keys District boundaries unless and until the nutrient reduction system is officially dispensed with as a result of official state action or judicial decree. The units being transferred off-site may not be transferred in a Tier 1 zoning district; or a special protection area if the construction of the units would require clearing of natural habitat; or if evaluated under ROGO the site would receive negative points under habitat protection, threatened or endangered species, or critical habitat.

e. The transfer of affordable units from one owner to another will be monitored by the County in a manner to be determined by the County from time to time.

f. Until such time as Monroe County shall adopt "workforce housing" regulations ORC shall comply in all respects with the definition of "affordable housing" in the Monroe County Code and shall additionally require each unit purchaser or adult occupant to be a member of the Monroe County workforce, i.e. to be gainfully employed, full time, in Monroe County at the time of purchase or occupancy and to remain so employed for not less than five years thereafter.

3. **Construction of the Agreement.** The parties hereto have entered into this Section 380.032 agreement in recognition of the unique circumstances applicable to the Property, and in consideration of the public benefits to be obtained by preserving workforce housing stock. Accordingly, this Section 380.032 Agreement should not be construed as establishing precedent or procedure for any other development application.

4. **General Provisions.** The County will not take any official action through its agents or employees which would contravene, interfere with or alter any provision in this agreement.

5. **Authorized Signatures.** The Board of County Commissioners of Monroe County, or its authorized designee, shall execute this Section 380.032 Agreement on behalf of the County following approval of this Agreement by the Board of County Commissioners. The Director of the Division of Community Planning, or his/her authorized designee, shall execute this Agreement on behalf of DCA. ORC shall execute this Agreement by its duly-authorized officer.

6. **Entirety of Agreement.** The County, DCA and ORC further agree that this Section 380.032 Agreement contains the entire and exclusive understanding and agreement among the parties and may not be modified in any manner except by an instrument in writing and duly signed by the County, DCA and ORC.

7. **Duplicated Originals.** This Section 380.032 Agreement may be executed in any number of originals, all of which evidence one agreement, and only one of which need be produced for any purpose.

8. **Enforcement.** In the event of a breach of this Section 380.032 Agreement, or failure to comply with any condition of it, the County, DCA and ORC may enforce this Agreement pursuant to §§ 380.05 and 380.11, *Florida Statutes*, or as otherwise provided by law.

9. **Scope of Authority.** This Section 380.032 Agreement affects the rights and obligations of the County, DCA and ORC as provided under the terms herein and Chapter 380, *Florida Statutes*. This Section 380.032 Agreement is not intended to influence or determine the authority or decisions of any other state or local government or agency in issuance of any other permits or approvals that might be required by state law or local ordinance for any development authorized by this Agreement except as otherwise provided herein.

10. **Effective Date.** This Agreement shall take effect upon signature of the last of the parties to sign this Agreement.

IN WITNESS WHEREOF, the parties by and through their respective undersigned duly authorized representatives have executed this Agreement on the dates and year below written.

COUNTY OF MONROE

**OVERSEAS REDEVELOPMENT
COMPANY, LLC**

DCA

Mayor/Chairman

**by: Joe Cleghorn, its
Manager**

**Director Division of
Community
Planning, DCA**

Date signed

Date signed

Date signed

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:



**SUZANNE A. HUTTON
COUNTY ATTORNEY**

Date

7/07/06